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10/035,700	10/29/2001	Christopher William Preist	30010014-2	4046
22879 7590 03/12/2010 HEWLETT-PACKARD COMPANY Intellectual Property Administration 3404 E. Harmony Road Mail Stop 35 FORT COLLINS, CO 80528			EXAMINER POINVIL, FRANTZY	
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1 UNITED STATES PATENT AND TRADEMARK OFFICE

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4 BEFORE THE BOARD OF PATENT APPEALS
5 AND INTERFERENCES
6

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8 *Ex parte* CHRISTOPHER WILLIAM PREIST and
9 CLAUDIO BARTOLINI
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12 Appeal 2009-002972
13 Application 10/035,700
14 Technology Center 3600
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17 Decided: March 10, 2010
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20 Before HUBERT C. LORIN, ANTON W. FETTING, and BIBHU R.
21 MOHANTY, *Administrative Patent Judges*.
22 FETTING, *Administrative Patent Judge*.

23 DECISION ON APPEAL
24

1 STATEMENT OF THE CASE

2 Christopher William Preist and Claudio Bartolini (Appellants) seek
3 review under 35 U.S.C. § 134 (2002) of a final rejection of claims 1-26, the
4 only claims pending in the application on appeal.

5 We have jurisdiction over the appeal pursuant to 35 U.S.C. § 6(b)
6 (2002).

7 SUMMARY OF DECISION¹

8 We AFFIRM.

9 THE INVENTION

10 The Appellants invented a computer system for allowing negotiation,
11 corresponding computer nodes and communication methods (Specification
12 1:6-7).

13 An understanding of the invention can be derived from a reading of
14 exemplary claims 1, 12, 18-19, and 23, which are reproduced below
15 [bracketed matter and some paragraphing added].

16 1. A computer system for allowing negotiation between a
17 plurality of entities, the computer system comprising:

18 [1] a computer network having a plurality of computer
19 nodes;

20 [2] a computer node being arranged to define the negotiation
21 between the entities with a set of negotiation activities;

¹ Our decision will make reference to the Appellants' Appeal Brief ("App. Br.," filed) and the Examiner's Answer ("Ans.," mailed).

[3] wherein the computer node is operable to implement a plurality of negotiation rule sets defining a plurality of market mechanisms, each rule set constraining the set of negotiation activities to a specific negotiation type and providing a framework for determining an outcome in the negotiation, thereby allowing an entity to select at least one of a plurality of negotiation types to establish the framework, the selected negotiation rule set being used to validate proposals submitted by participants in the negotiation, the computer node matching compatible proposals in accordance with rules defined in the selected negotiation rule set and forming an agreement.

12. A computer node for coupling to a computer system to allow negotiation between a plurality of entities, the computer node comprising:

[1] a processor, the processor being arranged to define the negotiation between the entities with a set of negotiation activities;

[2] wherein the processor is operable to implement a plurality of negotiation rule sets defining a plurality of market mechanisms, each rule set constraining the set of negotiation activities to a specific negotiation type and providing a framework for determining an outcome in the negotiation, thereby allowing an entity to select at least one of a plurality of negotiation types to establish the framework, the selected negotiation rule set being used to validate proposals submitted by participants in the negotiation, the computer node matching compatible proposals in accordance with rules defined in the selected negotiation rule set and forming an agreement.

18. A method for selecting a negotiation type between a plurality of entities via a computer network having a plurality of computer nodes, the method comprising:

[1] defining in a computer node a set of negotiation activities;

1 [2] allowing an entity to select via the computer node at least
2 one of a plurality of negotiation rule sets defining a plurality of
3 market mechanisms, each rule set constraining the set of
4 negotiation activities to a specific negotiation type and
5 providing a framework for determining an outcome in the
6 negotiation, thereby allowing an entity to select at least one of a
7 plurality of negotiation types to establish the framework, the
8 selected negotiation rule set being used to validate proposals
9 submitted by participants in the negotiation, the computer node
10 matching compatible proposals in accordance with rules
11 defined in the selected negotiation rule set and forming an
12 agreement.

13
14 19. A computer system for allowing negotiation between a
15 plurality of entities, the computer system comprising:

16 [1] a computer network having a plurality of computer
17 nodes;

18 [2] a computer node being arranged to define the negotiation
19 between the entities with a set of negotiation activities to
20 provide a framework for determining an outcome in the
21 negotiation;

22 [3] wherein a number of different market mechanisms are
23 definable by different arrangements of negotiation activities, the
24 negotiation activities include a proposal validator for validating
25 a proposal, received from an entity, with an agreement
26 template, a negotiation locale for providing a validated proposal
27 to a proposal compatibility checker for comparing proposals
28 received from the negotiation locale to determine compatibility
29 of received proposals to establish an agreement.

30
31 23. A computer node for coupling to a computer system to
32 allow negotiation between a plurality of entities, the computer
33 node comprising:

34 [1] a processor, the processor being arranged to define the
35 negotiation between the entities with a set of negotiation

1 activities to provide a framework for determining an outcome in
2 the negotiation;

3 [2] wherein a number of different market mechanisms are
4 definable by different arrangements of negotiation activities, the
5 negotiation activities include a proposal validator for validating
6 a proposal, received from an entity, with an agreement
7 template, a negotiation locale for providing a validated proposal
8 to a proposal compatibility checker for comparing proposals
9 received from the negotiation locale to determine compatibility
10 of received proposals to establish an agreement.

11
12 THE REJECTIONS

13 The Examiner relies upon the following prior art:

14 Thiessen US 5,495,412 Feb. 27, 1996

15 Claims 1-26 stand rejected under 35 U.S.C. § 102(b) as being anticipated
16 by Thiessen.

17 ISSUES

18 The issue pertinent to this appeal is whether the Examiner erred in
19 rejecting claims 1-26 under 35 U.S.C. § 102(b) as being anticipated by
20 Thiessen, which turns on whether Thiessen describes the feature recited by
21 limitation [3] of claim 1, limitation [2] of claim 12, limitation [2] of claim
22 18, limitations [2] and [3] of claim 19, and limitations [1] and [2] of claim
23 23.

FACTS PERTINENT TO THE ISSUES

The following enumerated Findings of Fact (FF) are believed to be supported by a preponderance of the evidence.

Facts Related to the Prior Art

Thiessen

01. Thiessen is directed to a computer based method and apparatus for assisting multiple parties involved in complex negotiations in reaching an agreement that optimizes the individual and overall benefit to the parties (Thiessen 1:9-13).

02. Thiessen describes an interactive computer-assisted negotiated process support (ICANS) system that includes a plurality of independent computer systems and graphical interfaces for the input and display of information (Thiessen 5:30-33). Each party to the negotiation use the computer systems to input their preferences to each disputed issue (Thiessen 5:41-46). The central computer then processes all of the received information and determines proposed solutions to the disputed issue that will provide an optimal level of both total and individual satisfaction or benefit to the parties (Thiessen 5:51-57). The analysis includes party preferences and permits consideration of any type of continuously valued or discontinuous smooth or kinked, linear or non-linear valued issue (Thiessen 7:9-13). The proposed solutions are then transmitted to each of the parties for review and approval (Thiessen 5:57-59).

03. Each party can input a range of possible decisions values for each disputed issue, such as ranges in continuous numerical values, a series of discrete numerical or linguistic values, yes/no, and on/off values (Thiessen 6:27-32). The system further allows for alternative solutions to the disputed problem, where a tradeoff is specified by a party for the solution (Thiessen 7:46-49).

Facts Related To The Level Of Skill In The Art

04. Neither the Examiner nor the Appellants has addressed the level of ordinary skill in the pertinent art of computer-assisted negotiations. We will therefore consider the cited prior art as representative of the level of ordinary skill in the art. *See Okajima v. Bourdeau*, 261 F.3d 1350, 1355 (Fed. Cir. 2001) (“[T]he absence of specific findings on the level of skill in the art does not give rise to reversible error ‘where the prior art itself reflects an appropriate level and a need for testimony is not shown’”) (quoting *Litton Indus. Prods., Inc. v. Solid State Sys. Corp.*, 755 F.2d 158, 163 (Fed. Cir. 1985).

Facts Related To Secondary Considerations

05. There is no evidence on record of secondary considerations of non-obviousness for our consideration.

PRINCIPLES OF LAW

Anticipation

"A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art

1 reference." *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628,
2 631 (Fed. Cir. 1987). "When a claim covers several structures or
3 compositions, either generically or as alternatives, the claim is deemed
4 anticipated if any of the structures or compositions within the scope of the
5 claim is known in the prior art." *Brown v. 3M*, 265 F.3d 1349, 1351 (Fed.
6 Cir. 2001). "The identical invention must be shown in as complete detail as
7 is contained in the ... claim." *Richardson v. Suzuki Motor Co.*, 868 F.2d
8 1226, 1236 (Fed. Cir. 1989). The elements must be arranged as required by
9 the claim, but this is not an *ipsissimis verbis* test, i.e., identity of terminology
10 is not required. *In re Bond*, 910 F.2d 831, 832 (Fed. Cir. 1990).

11
12 ANALYSIS

13 *Claims 1-26 rejected under 35 U.S.C. § 102(b) as being anticipated by*
14 *Thiessen*

15 The Appellants first contend that (1) Thiessen fails to describe the
16 feature recited by limitation [3] of claim 1, limitation [2] of claim 12,
17 limitation [2] of claim 18, limitations [2] and [3] of claim 19, and limitations
18 [1] and [2] of claim 23 (App. Br. 8-22 and Reply Br. 3). The Appellants
19 specifically contend that Thiessen fails to describe the ability to select a
20 framework to determine a solution and the ability to select from multiple
21 frameworks (App. Br. 9).

22 We disagree with the Appellants. The feature described by the
23 respective limitations in claims 1, 12, 18-19, and 23 requires rule sets that
24 define market mechanisms, where each rule set constrains negotiation

1 activities to a specific negotiation type and provides a framework for
2 determining an outcome. The feature further requires that a party can select
3 a negotiation type to establish a framework that is used for matching and
4 validating possible solutions.

5 Thiessen describes an interactive negotiation computer system. FF 01.
6 In this system, each party inputs preferred solutions to a disputed problem
7 and the system analyzes all of the input information to determine a solution.
8 FF 02. The analysis includes incorporating the type of disputed issue and all
9 of the party preferences, such as tradeoff alternative solutions and solution
10 ranges. FF 02-03. That is, each party selects preferences that define a set of
11 rules that dictate the framework for which a possible solution can be found.

12 The ability to handle multiple types of issues and determine a solution
13 based on different types of preferences is an instance of establishing a
14 framework for establishing a solution. As such, Thiessen describes
15 limitation [3] of claim 1, limitation [2] of claim 12, limitation [2] of claim
16 18, limitations [2] and [3] of claim 19, and limitations [1] and [2] of claim
17 23.

18 The Appellants further argue that claims 1, 12, 18-19, and 23 require that
19 an entity could select a rule set corresponding to a double auction or one
20 corresponding to an English auction. App. Br. 10. However, no such
21 limitation is found in the claim language. As such, preference selection need
22 not be limited to a double auction, English auction, or any other specific type
23 of auction and this argument is not found persuasive.

24 The Appellants even further contend that Thiessen's description of
25 comparing and matching difference proposals is not tantamount to defining a

1 rule set that defines how the comparing and matching processes should be
2 implemented (App. Br. 11), however, fail to specifically articulate how
3 Thiessen's description of user input preferences towards a possible solution
4 are not the same as defining a rule set used determine a solution. As such,
5 this argument is also not found persuasive.

6 The Appellants further contend that (2) claims 2-11, 13-17, 20-22, and
7 24-26 are allowable for the same reasons as claims 1, 12, 19, and 23. App.
8 Br. 12, 15, 20, and 22; Reply Br. 3. The Appellants arguments *supra* were
9 not found persuasive and are not found persuasive here for the same reasons.

10 CONCLUSIONS OF LAW

11 The Examiner did not err in rejecting claims 1-26 under 35 U.S.C. §
12 102(b) as being anticipated by Thiessen.

13 DECISION

14 To summarize, our decision is as follows.

- 15 • The rejection of claims 1- 26 under 35 U.S.C. § 102(b) as being
16 anticipated by Thiessen is sustained.

17
18 No time period for taking any subsequent action in connection with this
19 appeal may be extended under 37 C.F.R. § 1.136(a)(1)(iv).

20
21 AFFIRMED
22
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Appeal 2009-002972
Application 10/035,700

1 mev

2

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